



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 5th day of April, 2000

Application of

VIRGIN ATLANTIC AIRWAYS LIMITED

for an exemption from Subparts K and S of
Part 93 of Title 14, Code of Federal Regulations
pursuant to 49 U.S.C. § 41714(b)(1)

Served: April 5, 2000

Docket OST-00-6952 -11

ORDER GRANTING EXEMPTION

APPLICATION

On February 17, 2000, Virgin Atlantic Airways Limited (Virgin Atlantic) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. § 41714(b)(1), to the extent necessary to enable it to continue to operate a daily nonstop, round-trip flight between London, United Kingdom (Heathrow Airport) and Chicago, Illinois (O'Hare International Airport), using Airbus A-340 and/or Boeing 747-200 equipment (both Stage 3 aircraft). Virgin Atlantic requests two slot exemptions to accommodate an O'Hare arrival at 1:10 P.M. and an O'Hare departure at 5:00 P.M. By Order 99-8-6, the Department previously gave Virgin Atlantic a similar exemption for the 1999-2000 winter season and the instant application seeks to renew the same exemption authority for the 2000 summer season.¹

In support of its application, Virgin Atlantic states that it filed the subject application because the FAA has notified the carrier that its request for new access at Chicago exceeded the number of slots that FAA could allocate at that airport. Virgin Atlantic argues that its application is consistent with the U.S.-U.K. aviation agreement, that it has complied with our procedural requirements, and that grant of its application would produce public benefits in the form of enhanced services to consumers.

US Airways, Inc. (US Airways), Trans World Airlines, Inc. (TWA), and United Air Lines, Inc. (United) filed answers opposing the Virgin Atlantic application. The Allegheny County Airport and Pittsburgh International Airport Authority (Pittsburgh) filed a motion for leave to file and answer opposing the Virgin Atlantic request. The City of Chicago (Chicago) filed an answer in support of the Virgin Atlantic application. Virgin Atlantic filed a reply to the

¹ The 2000 summer season begins April 2, 2000, and ends October 28, 2000.

opposing answers, US Airways filed a reply to the Chicago answer, and Chicago filed a motion for leave to file and a consolidated reply.

By Order 2000-3-25, the Department granted the Virgin Atlantic application for the period April 2, 2000, through April 16, 2000. We took this action in order to give additional consideration to the important foreign policy aviation issues raised by the opposing and supporting parties.²

The pleadings of the parties were described in Order 2000-3-25.

REGULATORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Ronald Reagan Washington National Airport as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. § 41714(b)(1), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

DECISION

We will grant Virgin Atlantic two exemptions to enable it to perform one scheduled flight arrival and one departure per day at O'Hare in the London Heathrow-Chicago O'Hare market during period April 17, 2000, through October 28, 2000. We find that grant of this exemption authority is consistent with the public interest and with the objectives of the U.S.-United Kingdom bilateral air services agreement, which contemplates reasonable access to the market for carriers of either nation.

We also affirm our earlier finding in Order 99-8-6 that while U.S. carrier access at foreign airports is a relevant factor in our consideration of foreign carrier slot exemption requests at U.S. slot-controlled airports,³ we do not agree that TWA, United, or US Airways has been denied corresponding access at the London airports.

We again note that while the U.S. and U.K. slot regimes and procedures differ, no party has provided evidence that the U.K. government has treated U.S. carriers in a discriminatory manner with respect to slot allocation at Heathrow airport contrary to the provisions of Bermuda 2. Absent such evidence, we do not find, as the opposing parties argue, that U.S.

² By Order 2000-3-25, we also granted the Pittsburgh and Chicago motions for leave to file.

³ Order 99-2-22 at 4, and Order 99-8-6 at 3.

flag carriers suffer a lack of reciprocity that would cause us to disapprove this exemption request.

In reaching our decision, we recognize that Virgin Atlantic filed a timely request with the FAA for these additional slots, and that due to hourly constraints the FAA has not been able to accommodate the applicant's request within the requested time frames. Moreover, we note that aviation relations with United Kingdom are governed by the U.S.-U. K. Air Services Agreement, which provides for the proposed London-Chicago service, and Virgin Atlantic has been properly authorized by its government to provide scheduled foreign air transportation in the London-Chicago market.⁴

As we have recently affirmed,⁵ while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition, including all appropriate industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, Virgin Atlantic followed those standard slot-allocation procedures.

Because grant of this exemption authority is dependent upon the applicant's existing U.S.-United Kingdom operating authority, we attach the condition that this exemption authority may be used only in the provision of Virgin Atlantic's scheduled service between London (Heathrow) and Chicago (O'Hare). Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Virgin Atlantic with only a temporary slot allocation at O'Hare Airport and does not confer on the applicant any ability to sell, trade, transfer, or convey this exemption authority. Finally, we note that legislation is pending that would remove the need for granting Virgin Atlantic slot exemptions after May 1, and we expect this legislation to be enacted when signed by the President.

This Order is issued under authority delegated in 49 C.F.R. 1.56a(f)(1).

ACCORDINGLY,

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Virgin Atlantic Airways Limited to the extent necessary to enable it to operate one daily scheduled arrival between 12:45 P.M. and 1:14 P.M. (local time) and one daily scheduled departure between 4:45 P.M. and 5:14 P.M. (local time) at Chicago's O'Hare International Airport in a pattern to be determined in consultation between Virgin Atlantic Airways Limited and the Slot Administration Office, FAA;

⁴ While our findings in this matter will allow for the improvement of services in the London-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

⁵ See Orders 97-4-1 at 4 and 97-3-31 at 5.

2. As a condition of approval, Virgin Atlantic Airways Limited may use this exemption authority only to provide scheduled service between London (Heathrow Airport), and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. We direct Virgin Atlantic Airways Limited to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the single exemption granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;
6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on April 17, 2000, and expires on October 28, 2000, or upon the effectiveness of the superseding statutory provision;
7. We will serve this order on the Ambassador of the United Kingdom in Washington, D.C.; the City of Chicago; Virgin Atlantic Airways Limited; the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and
8. We grant all motions to file otherwise unauthorized documents.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

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